88-480

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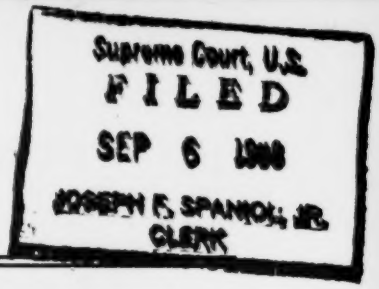

In the

Supreme Court of the United States

OCTOBER TERM, 1988

Alvin Hammock, et al.,
Petitioner,

V.

Charles E. Plunkett, et al.,
Respondents.

PETITIONER FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

L. H. MAHON
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Little Rock, AR 72201
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Counsel for the Petitioner

QUESTIONS PRESENTED

I.

WHETHER THE EIGHTH CIRCUIT COURT OF APPEALS ERRED WHEN IT REFUSED TO GRANT DECLARATORY AND INJUNCTIVE RELIEF BASED ON CONSTITUTIONAL GROUNDS.

II.

WHETHER THE EIGHTH CIRCUIT COURT OF APPEALS HAS ACTED IN CONFLICT WITH THE HOLDINGS OF THIS COURT WHEN IT MISCHARACTERIZED A MINISTERIAL DIRECTIVE OF A STATE COURT JUDGE AS A FINAL JUDGMENT.

PARTIES INVOLVED

The parties involved in this petition are: Alvin Hammock, Lillian Green, Walter Hammock, Ruby Hammock Dennis, Artis Hammock, Nettie B. Hammock Cooper, William J. Hammock and Mabel Hammock, petitioners; Charles E. Plunkett, in his official capacity as chancery judge of the Ouachita County, Arkansas Chancery Court, respondent.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES INVOLVED ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 2

STATE RULE INVOLVED 2

STATEMENT 3

REASONS FOR GRANTING THE WRIT 5

I. THE DECISIONS BELOW CONFLICT WITH THIS COURTS' HOLDING IN *DISTRICT OF COLUMBIA COURT OF APPEALS, ET. AL. V. FELDMAN* 5

A. There is a fundamental distinction between federal court review of a state couurt's final judgment and challenges of the validity of actions taken by a state court based upon constitutional grounds 5

B. Appellant does not challenge a state court decision arising out of a particular judicial proceeding, rather he challenges the constitutionality of an action taken by a state judge regarding a non-judicial matter 6

1. *Ministerial acts of a state court judges are not final judgments of a state court within the meaning of 28 U.S.C. § 1257* 6

2. *Judge Plunkett's directive to the reporter instructing her not to prepare the transcript for appeal was non-judicial and ministerial* 7

CONCLUSION 12

APPENDIX:

APPENDIX A (Opinion of the Court of Appeals) A-1

APPENDIX B (Opinion of the District Court) B-1

APPENDIX C (Judgment of the Court of Appeals) C-1

APPENDIX D (Order Denying Petition of Rehearing) D-1

TABLE OF AUTHORITIES

CASES: Page

Birch v. Mazander, 678 F.2d 754, 756 (8th Cir. 1982) 7

Dasher v. Supreme Court of Texas, 658 F.2d 1045 (5th Cir. 1981) 9

District of Columbia Court of Appeals, et. al. v. Feldman, 460 U.S. 483, 484 (1983) 5

Doe v. Pringle, 550 F.2d 596 (10th Cir. 1976) 5

Harper v. Merckle, 638 F.2d 848 (5th Cir. 1981) cert. den. 454 U.S. 816 (1982) 8

Prentis v. Atlantic Coast Line Co., 211 U.S. 210 (1908) 7

Stump v. Sparkman, 435 U.S. 349, 362 (1982) 7

STATUTES AND RULES:

28 U.S.C. § 1254 (1) 2

28 U.S.C. § 1257 ..... 6, 7

42 U.S.C. § 1983 9

Ark. R. App. P. 5 (b) 8

No.

In the
Supreme Court of the United States

OCTOBER TERM, 1988

Alvin Hammock, et al.,
Petitioner,

V.

Charles E. Plunkett, et al.,
Respondents.

PETITIONER FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The petitioners, Alvin Hammock, et. al., respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in this proceeding February 24, 1988.

OPINIONS BELOW

The opinion of the court of appeals is set forth in Appendix A, *infra, pp. A-1—A-2.* It is set forth in Appendix B, *infra, pp. B-1—B-3.*

JURISDICTION

The judgment of the court of appeals was entered on February 24, 1988. It is set forth in Appendix C, *infra, pp. C-1—C-6.* A timely petition rehearing en banc was denied on April 14, 1988. The order is set forth in Appendix D, *infra, pp. D-1—D-4.*

This Court's jurisdiction is invoked pursuant under 28 U.S.C. § 1254 (1).

STATE RULE INVOLVED

Ark. R. App. P. 5 (b)

In cases where there has been designated for inclusion any evidence or proceeding at the trial or hearing which was stenographically reported, the trial court, upon finding that a reporter's transcript of such evidence or proceeding has been necessary for the inclusion in the record of evidence or proceeding stenographically reported, may extend the time for filing the record on appeal, but the order of extension must be entered before the expiration of the period for filing as originally prescribed or extended by a previous order. In no event shall the time be extended more than seven (7) months from the date of the entry of the judgment, decree or order, or from the date on which a timely postjudgment motion under Rule 4 (b) is deemed to have been disposed of under Rule 4 (c), whichever is later. An appeal from an order disposing of a postjudgment motion under Rule 4 brings up for review the judgment, decree and any intermediate order involving the merits and necessarily affecting the judgment, as well as the order appealed from. Counsel seeking an extension shall give to opposing counsel notice of the application for an extension of time. [Amended by Per Curiam May 20, 1985; Amended by Per Curiam July 7, 1986, effective September 15. 1986.]

STATEMENT

Petitioners, Alvin Hammock, Lillian Green, Walter Hammock, Ruby Hammock Dennis, Artis Hammock, Nettie B. Hammock Cooper, William J. Hammock and Mabel Hammock McRae sought declaratory and injunctive relief in the Western District of Arkansas to redress the deprivation of rights secured to the plaintiff.

The petitioners are black persons, the heirs of J.W. Hammock. J.W. Hammock while on furlough from the Ark. State Mental Hospital, purportedly gave a deed to sixty acres of oil rich land in Ouachita County, Arkansas to the Bank of Stevens Arkansas under which the defendants all of which are white, claimed title. Said deed was the subject of dispute. However the crux of the matter involve the following:

The respondent is Charles E. Plunkett, in his official capacity as chancery judge of the Ouachita County, Arkansas Chancery Court.

Jurisdiction in the district court proceeding was sought pursuant to 28 U.S.C. §§ 1343 (3), (4), 1651, 2201, and 2202, 42 U.S.C. §§ 1981, 1982, 1985, and 1986, and the Fifth and Fourteenth Amendments.

Petitioners commenced their cause of action seeking declaratory and injunctive relief on the basis that Judge Plunkett, sitting as Chancery Judge in a state court matter, abused his discretion in denying a motion for an extension of time in which to lodge a trial transcript with the Arkansas Court of Appeals. Further, the petitioner sought injunctive relief seeking a judgment declaring Rule 5 of the Arkansas Rules of Appellate Procedure to be unconstitutional as being in derogation of the Fifth and Fourteenth Amendments to the United States Constitution. The petitioners sought a declaratory judgment, directing Judge Plunkett to order the trial transcript of the state

court proceeding and extending the time in which to lodge the transcript with the Arkansas Court of Appeals.

Petitioners further requested that the district court issue an order a bar of the Honorable Robert Laney, attorney at law, from representing the separate defendants, specifically the heirs of H.D. Grayson, the heirs of Gordon S. Foster, and the heirs of W.L. Jameson. Petitioners requested that the district order a new trial in the state court action. In conclusion, petitioners prayed for the district court to decide all collateral issue which were pendent to petitioner's complaint in the state court proceedings.

REASONS FOR GRANTING THE WRIT

I. THE DECISIONS BELOW CONFLICT WITH THIS COURTS' HOLDING IN *DISTRICT OF COLUMBIA COURT OF APPEALS, ET. AL. V. FELDMAN.*

A. There is a fundamental distinction between federal court review of a state court's final judgment and challenges of the validity of actions taken by a state court based upon constitutional grounds.

In *District of Columbia Court of Appeals, et. al. v. Feldman*, 460 U.S. 483, 484, 484 (1983), this Court recognized the difference between seeking review in a federal district court of a state court's final judgment and challenging the validity of a state rule. To highlight this distinction, this Court used *Doe v. Pringle*, 550 F.2d 596 (10th Cir. 1976).

In *Pringle*, a plaintiff challenged in United States District Court the constitutionality of a state-court decision denying his application to the bar. The court noted that there is a subtle but fundamental distinction between two types of claims which a frustrated bar applicant might bring to federal court. The first is a constitutional challenge to the state's general rules and regulations governing admission; the second is a claim, based on constitutional or other grounds, that the state has unlawfully denied a particular applicant admission. *Id.* at 597. The Court held that while federal courts do exercise jurisdiction over many constitutional claims which attack the state's power to license attorneys involving challenges to either the rule-making authority or the administration of the rules, . . . *such is not true where review of a state court's adjudication of a particular application is sought.* The Court ruled that the latter claim may be heard, if at all, exclusively by the Supreme Court of the United States. *Id.* (emphasis in original)

In *Feldman*, this Court concurring with the rationale and holding in *Pringle* noted that:

> "Challenges to the constitutionality of state bar rules do not necessarily require a United States district court to review a final state-court judgment in a judicial proceeding. Instead, the district court may simply be asked to assess the validity of a rule promulgated in a non-judicial proceeding. In this regard, 28 U.S.C. §1257 does not act as a bar to the district court's consideration of the case and because the proceedings giving rise to the rule are non-judicial the policies prohibiting United States district court review of final state-court judgments are not implicated.

Feldman, 460 U.S. at 486. United States District Courts, therefore, have subject matter jurisdiction over general challenges to state rules, promulgated by state courts in non-judicial proceedings, which do not require review of a final state-court judgment in a particular case. *Id.* Thus, the major limitation which this Court has imposed upon federal district courts with regards to jurisdiction over claims involving state courts is that federal district courts do not have jurisdiction over challenges to state-court decisions in particular cases arising out of judicial proceedings. *Id.*

B. Appellant does not challenge a state-court decision arising out of a particular judicial proceedings; rather he challenges the constitutionality of an action taken by a state judge regarding a non-judicial matter.

1. *Ministerial acts of state court judges are not final judgments of a state court within the meaning of 28 U.S.C. §1257.*

An action taken by a state court judge in his ministerial capacity is not a final judgment. Section 1257 of Title 28 of the United States Code vests in the United States Supreme Court the exclusive appellate jurisdiction over final

judgments rendered by the highest court of a state. 28 U.S.C. §1257. A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210 (1908). A judgment is an act of the court which constitutes a present adjudication. It is "a decree and any order from which an appeal lies". FED. R. CIV. P. 54 (b). Thus, as used in the context of §1257, a final judgment is best understood as a final decision of the court resolving the dispute and determining the rights and obligations of the parties.

A state court judge's directive to a court reporter requesting that she impede the perfection of an appeal by refusing to prepare a transcript is not a final judgment within the meaning of §1257. Such a directive is not an order or judgment at all; rather, it is most properly characterized as a non-judicial action. *Birch v. Mazander*, 678 F.2d 754 (8th Cir. 1982) *citing, Stump v. Sparkman*, 435 U.S. 349, 362 (1978). It does not resolve the dispute between the parties nor does it determine respective rights and obligations of parties.

2. *Judge Plunkett's directive to the court reporter instructing her not to prepare the transcript for appeal was non-judicial and ministerial.*

The appellate court's finding that appellant's complaint was properly dismissed pursuant to §1257 by implication suggests that Judge Plunkett's actions were judicial. This characterization was in error. At best, Judge Plunkett's ministerial instructions to his court reporter were non-judicial actions.

An act is a judicial act if it is one normally performed by a judge and if the complaining party is dealing with the judge in his judicial capacity. *Birch, id* at 756. A judge's actions do not amount to "judicial acts" where it is beyond

reasonable dispute that the judge acts out of personal motivation and uses his judicial office as an offensive weapon to vindicate personal objectives and where it further appears certain that no party has invoked the judicial machinery for any purpose at all. *Harber v. Merckle*, 638 F.2d 848 (5th Cir. 1981) *cert. den.* 454 U.S. 816 (1982).

In the instant case, the court reporter refused to prepare a transcript despite petitioner's request. The court reporter's refusal to prepare the transcript was based solely upon a directive from Judge Plunkett. This directive was not a judicial act nor was it a judgment or order. Rule 5 (b) of the Arkansas Rules of Appellate Procedure only confers upon the trial court the power to extend the time for filing the record on appeal. *Arkansas Rules of Appellate Procedure*, Rule 5 (b). It also gives the court reporter the discretion to seek an extension of time in which to file a transcript. *Id.* However, the Rules do not give the trial court the authority to refuse to allow a transcript to be prepared for appeal.

C. The Appellate Court's decision would eliminate review of unconstitutional actions taken by state court judges in their non-judicial capacity where the judge who took these actions also participated in the proceedings of the particular plaintiff's claim.

In *Feldman*, this Court took great pains to highlight the line of demarcation between district court review of final state court judgments and claims presented to district courts challenging the validity of actions by state court officials. In the process of drawing these lines, the Court considered cases which fall on the lines. The Court noted that a constitutional claim presented to a United States District Court which is inextricably intertwined with a state court's denial in a judicial proceeding of a particular

plaintiff's claim would in essence require review of a state court decision—an action which is impermissible. *Feldman*, 460 U.S. at 482 fn 16. The Court reached this decision after considering the Fifth Circuit's decision in *Dasher v. Supreme Court of Texas*, 658 F.2d 1045 (5th Cir. 1981).

In *Dasher*, the appellant's §1983 action was barred by the district court on the basis that her claim was most properly brought in the United States Supreme Court as provided by §1257 (3). The Court of Appeals noted because the record gave no indication that the plaintiff asserted the constitutional claim which was the basis of her §1983 action in the Texas Supreme Court, her case could not have been reviewed on a writ of certiorari from the United States Supreme Court since §1257 (3) only authorizes the Supreme Court to review judgments in state court cases in which a federal issue was raised and adjudicated. It therefore concluded that since the plaintiff's §1983 complaint stated claims for relief grounded in federal constitutional rights, a claim which was not presented to the Texas Supreme Court, plaintiff's §1983 suit did not constitute an impermissible effort to seek review of a state court judgment in a lower court. *Dasher*, 658 F.2d at 1051.

This Court called this line of reasoning flawed. *Feldman*, 460 U.S. at 483. One of the reasons given was that constitutional claims inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's case could not be reviewed by a district court. *Id.* This Court characterized such review as, in essence, requiring the district court to review the state-court decision. In addition, this Court noted that because it may not have jurisdiction to review a final state-court judgment because a petitioner's failure to raise his constitutional claims in state court does not mean that a United States district court should have jurisdiction over the claims. By failing to raise his claim in state court a plaintiff may forfeit his right to his claim in any federal court. *Id.* Finally, this Court expressed that the policy of allowing state court

review of constitutional claims as a predicate to certiorari jurisdiction was implicated. The Court argued that it was desirable to give the state court the first opportunity to consider a state statute or rule in light of federal constitutional arguments. *Id.*

The instant case is distinguishable from *Dasher.* In *Dasher,* the actions which the plaintiff complained of dealt with a state court's proceeding. However, as previously noted, Judge Plunkett's actions took place outside of the perimeters of judicial proceedings. No stretch of reason or logic could justify the characterization of a directive to a court reporter not to prepare a transcript as a final judgment of the court. This directive had no indicia of a final judgment. In addition, the plaintiff in *Dasher* could have raised her claim in state court during a judicial proceeding but she failed to do so. However, the basis of the claim in the instant case was not an outgrowth of a judicial proceeding. It was the result of an unconstitutional action taken subsequent to a state court proceeding. It was not possible for appellant to raise any constitutional challenge because the judge's directive was not one from which an appeal lies and because the judge's directive effectively blocked plaintiff's ability to appeal. Judge Plunkett's directive was a unilateral action motivated by personal vindictiveness.

The instant case is not one where the constitutional claim for relief was inextricably intertwined with a state court proceeding. Appellant's constitutional challenges to the non-judicial actions of Judge Plunkett were properly raised in district court.

CONCLUSION

On the whole, *Feldman* instructs that while United States District Courts do not have subject-matter jurisdiction over a challenge to a state-courts decision in cases arising out of judicial proceedings, they do have subject-matter jurisdiction over general challenges to non-judicial actions of state court officials involving state court officials. *Feldman*, 460 U.S. at 486. The appellate court blurs the distinction between these two fundamentally different actions by mischaracterizing appellant's challenges to non-judicial actions of a state court judge as an attempt to seek review of a final judgment of a state court judge.

The appellate court's decision, in effect, ignores the subtle distinction and this Court should grant review in this case to correct the misapplication of its holding in *Feldman*.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Counsel for the Petitioner

APPENDIX

APPENDIX - A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 87-2249WA

Alvin Hammock, et al,	*	
	*	
Appellants,	*	
	*	
vs.	*	Appeal from the United
	*	States District Court
Charles E. Plunkett, etc.,	*	for the Western
et al,	*	District ofArkansas.
	*	
Appellees.	*	
	*	

Appellants' petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

April 14, 1988

Order entered at the Direction of the Court:

/s/ Robert D. St. Vrian
Clerk, U.S. Court of Appeals, Eighth Circuit.

APPENDIX - B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 87-2249

Alvin Hammock; Lillian Green; Walter Hammock; Ruby Hammock Dennis; Artis Hammock; Nettie V. Hammock Cooper; William J. Hammock; Mabel Hammock McRae,	*	
Appellants,	*	
v.	*	
Charles E. Plunkett, in his official capacity as Chancery Judge of the Ouachita County, Arkansas Chancery Court; Margaret Curry Grayson, Sole Beneficiary under the Last Will and Testament of H.D. Grayson, Deceased; Alice Grayson Abbott; Kathleen Grayson Johnson; Virginia Ann Dicks and Duncan Grayson, Sole Heirs under the Last Will and Testament of P.C. Grayson, Deceased; Gordon S. Foster, Jr.; David P. Foster, Sole Beneficiaries under the Last Will and Testament of Gordon S. Foster, Deceased; Mary Jane Foster Short; Alice Foster Bradley; Catherine Reeves Jeane; Ann Reeves Eddy; Sue Grayson Jameson; Sally Sue French, Sole Beneficiaries	*	Appeal from the United States District Court for the Western District of Arkansas.

under the Last Will and Testament of *
W.L. Jameson, Jr., Deceased, *
*
Appellees. *

Submitted: February 2, 1988

Filed: February 24, 1988

Before ARNOLD, FAGG, and WOLLMAN, Circuit Judges.

PER CURIAM.

The district court dismissed the complaint filed by appellants, which essentially seeks review of the final judgment of a state court. The district court correctly observed that "a United States District Court is without authority to review final determinations of [a state court] in judicial proceedings." *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476, 482 (1983). Instead, review of final state court judgments can be obtained only in the United States Supreme Court. *Id.* at 476. We agree with the district court's conclusion that it lacked subject matter jurisdiction to consider the complaint; thus, the district court's order dismissing appellants' complaint is affirmed and the appeal is dismissed. *See* 8th Cir. R. 12(a).

A true copy.

Attest:

/s/ Robert D. St. Vrain
CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

U.S. District Court
Western Dist. Arkansas
Filed
April 25, 1988

Chris R. Johnson, Clerk
By Jane C. Wright
Deputy Clerk

APPENDIX - C

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

ALVIN HAMMOCK, ET AL, PLAINTIFFS,	)	
VS.	)	NO. 87-1030
CHARLES E. PLUNKETT, in his official capacity as Chancery Judge of Ouachita County, Arkansas Chancery Court, ET AL, DEFENDANTS.	)	

ORDER

Before the Court are defendant Charles E. Plunkett's Motion to Dismiss, a Motion to Dismiss, alternatively for Summary Judgment filed on behalf of the remaining defendants in the above styled cause and a Motion for Summary Judgment filed by the plaintiffs herein.

Plaintiffs commenced this action seeking a declaratory judgment that Judge Plunkett, sitting as Chancery Judge in a state court matter, abused his discretion in denying a motion for extension of time in which to lodge a trial transcript with the Arkansas Court of Appeals. Further, the plaintiffs seek a judgment declaring Rule 5 of the Arkansas Rules of Appellate Procedure to be unconstitutional as being in derogation of the Fifth and Fourteenth Amendments to the United States Constitution. The plaintiffs seek a declaration directing Judge Plunkett to order the trial transcript of the state court proceeding and extending the time in which to lodge the transcript with the Arkansas Court of Appeals.

Alternatively, the plaintiffs seek an order barring the Honorable Robert Laney, attorney at law, from representing the separate defendants, i.e. the heirs of H.D. Grayson, the heirs of Gordon S. Foster, and the heirs of W.L. Jameson (Heirs). The plaintiffs seek an order granting them a new trial in the state court action. Finally, the plaintiffs pray that this Court decide "all issues herein" under its pendant jurisdiction.

Jurisdiction is alleged pursuant to 28 U.S.C. §§1343(3), (4), 1651, 2201, and 2202, 42 U.S.C. §§1981, 1982, 1983, 1985, and 1986, and the Fifth and Fourteenth Amendments.

This action arises out of a final decree entered by the Chancery Court of Ouachita County, Arkansas, Judge Plunkett presiding. Plaintiffs herein had commenced an action in that court to set aside certain deeds executed by one John W. Hammock and to quiet title to the lands there affected in each plaintiff in equal shares.

On July 21, 1984, the matter came to be heard before the Chancery Court. On July 26, 1984, a final decree was entered in favor of the defendants and against the plaintiff in the state court. The Chancery Court held that the plaintiffs had failed to prove any right, title, interest, claim or estate in or to the subject real property. Furthermore, the Chancery Court held that the defendants were the owners and were entitled to the quiet and peaceful enjoyment of the subject real property. The plaintiffs, and all persons claiming under them, were permanently enjoined from asserting any claim or title adverse to the defendants concerning the real property. Thus, the complaint was dismissed with prejudice.

Notice of Appeal was filed on August 15, 1984. No transcript was ordered. Neither did plaintiffs properly designate the record for appeal. Plaintiffs filed an "Amended Notice of Appeal" on October 24, 1984, in which it was recited that a transcript had been ordered from the

court reporter. On November 9, 1984, an Order was entered denying the plaintiffs' Motion for Extension of Time in which to conform the Arkansas Rules of Appellate Procedure. The Chancery Court found that the Notice of Appeal did not conform to Rule 3(e), A.R.A.P. The Chancery Court found that the transcript had not been ordered and that the first contact concerning a transcript was made on November 6, 1984. Thus, based upon Rules 3 and 6, A.R.A.P., and Rule 11, Arkansas Rules of Civil Procedure, the Chancery Court denied the motion. A Second Motion for Extension of Time was denied on November 13, 1984.

On November 13, 1984, plaintiff filed a Motion for Rule on the Clerk with the Arkansas Supreme Court, in which the plaintiffs sought relief from their failure to comply with the procedural requisites for perfection of their appeal. The Arkansas Supreme Court ruled that the motion was not well taken and denied the motion in a per curiam order dated December 21, 1984. The Supreme Court ruled that the Chancery Court did not abuse its discretion in denying the Second Motion for Extension of Time.

The plaintiffs' amended complaint herein contains language identical to that embraced in the complaint filed in the state court. Plaintifffs have added the claims of deprivation of constitutionally protected rights under the above cited statutes and constitutional amendments in effort to establish jurisdiction in this Court.

It is well established that a state court judge is entitled to absolute immunity for acts committed within his judicial jurisdiction, even when such acts are in excess of his jurisdiction and are alleged to have been performed maliciously or corruptly. *Stump v. Sparkman*, 435 U.S. 349 (1978). Liability of the judicial officer can only be established where the judge acts in clear absence of all jurisdiction. *Stump v. Sparkman, supra.* The defense of absolute immunity is necessary in order to shield public officials from undue interference with their responsibilities. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

From a careful review of the amended complaint and the record as a whole, the Court finds that the actions of Judge Plunkett were committed in the course of his official duties as Chancery Judge. Further, the Court finds that Judge Plunkett was properly exercising the jurisdiction conferred upon him by the laws of the State of Arkansas. The acts of which plaintiffs complain are within the purview of the duties and responsibilities associated with the judicial post which Judge Plunkett fills.

Therefore, the Court concludes that Judge Plunkett is entitled to the protection of absolute immunity under *Stump v. Sparkman, supra.* Judge Plunkett's Motion to Dismiss should be granted.

The action is at best an attempt to relitigate the issues presented heretofore in state court, though couched in constitutional terms. The plaintiffs are dissatisified with the outcome of their state court action. Because of their failure to comply with the Arkansas Rules of Appellate Procedure, the plaintiffs were denied appellate review of Judge Plunkett's decision. However, this Court is without subject matter jurisdiction to consider the plaintiffs' complaint.

It is well established that a United States District Court is without authority to review final judgments of a state court, rendered in a judicial proceeding. *District of Columbia Court of Appeals v. Feldman,* 460 F.2d 462, 476, 482 (1983). Should it assume jurisdiction over such a matter, the district court would be engaging in appellate jurisdiction in contravention of congressional legislation which grants only original jurisdiction to district courts. *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 416 (1923). Review of a final state court judgment can be had only in the United States Supreme Court. *Feldman,* 460 U.S. at 476.

The Court concludes that *Feldman* is controlling herein and that the Court is without subject matter jurisdiction to

consider the plaintiffs' complaint. *See also Harris v. Missouri Court of Appeals*, 787 F.2d 427 (8th Cir.), *cert. denied*, 107 S.Ct. 179 (1986). Although the issue of subject matter jurisdiction in this context was not raised by the defendant heirs, the Court must make a review of the case to determine whether jurisdiction exists. Finding a subject matter jurisdiction lacking, the Court concludes that the complaint as against the defendants, the heirs and Judge Plunkett, should be dismissed with prejudice. *See* Rule 12(b)(1).

Insofar as plaintiffs' Motion for Summary Judgment is concerned, the Court concludes that the motion is not well taken and should be denied. Based upon the foregoing rulings (finding that Judge Plunkett is entitled to absolute immunity and finding that subject matter jurisdiction is lacking), no additional analysis of plaintifffs' contentions is merited.

IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED that defendant Charles E. Plunkett's Motion to Dismiss based upon absolute immunity be and the same is hereby granted.

IT IS FURTHER ORDERED that the complaint against the defendants (heirs and Judge Plunkett) be and the same is hereby dismissed based upon a lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that plaintiffs' Motion for Summary Judgment is hereby denied.

IT IS FURTHER ORDERED that the complaint filed in the above styled cause is hereby dismissed with prejudice.

Dated this 8th day of July, 1987.

/s/ Oren Harris
United States District Judge

This document entered on docket in
compliance with Rule 58 and 79(a).
FRCP,
on 07-08-87 By Jane C. Wright

U.S. District Court
Western Dist. Arkansas
Filed
July 08, 1987
Beverly R. Stites, Clerk
By /s/ Jane C. Wright
Deputy Clerk

APPENDIX - D

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

Alvin Hammock; Lillian Green; Walter Hammock; Ruby Hammock Dennis; Artis Hammock; Nettie V. Hammock Cooper; William J. Hammock; Mabel Hammock McRae,	]	
Plaintiffs,	]	
v.	]	NO. 87-1030
Charles E. Plunkett, in his official capacity as Chancery Judge of the Ouachita County, Arkansas Chancery Court; Margaret Curry Grayson, Sole Beneficiary under the Last Will and Testament of H.D. Grayson, Deceased; Alice Grayson Abbott; Kathleen Grayson Johnson; Virginia Ann Dicks and Duncan Grayson, Sole Heirs under the Last Will and Testament of P.C. Grayson, Deceased; Gordon S. Foster, Jr.; David P. Foster, Sole Beneficiaries under the Last Will and Testament of Gordon S. Foster, Deceased; Mary Jane Foster Short; Alice Foster Bradley; Catherine Reeves Jeane; Ann Reeves Eddy; Sue Grayson Jameson and Sally Sue French, Sole Beneficiaries under the Last Will and Testament of W.L. Jameson, Jr., Deceased,	]	
Defendants.	]	

ORDER

In this action the above-named plaintiffs filed a complaint dated March 3, 1987, against the defendants, including The Honorable Charles E. Plunkett, in his official capacity as Chancery Judge of Ouachita County, Arkansas, Chancery Court, seeking declaratory judgment and injunctive relief to redress the deprivation of rights secured to the plaintiffs invoking 28 U.S.C. §1343(3), §§1651, 2201 and 2202. Additionally, jurisdiction is alleged pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983 providing for the redress of deprivation of rights under color of law. Ostensively the civil rights jurisdiction alleged is based on the fact that the plaintiffs are black citizens.

Various and sundry motions have been filed by the parties, including motions to dismiss, motions for summary judgment and motion to file amended complaint.

The thrust of the plaintiffs' contention is to set aside and declare null and void the order, judgment and decree of The Honorable Charles E. Plunkett, Chancery Judge, Ouachita County, Arkansas, First Division, entered July 20, 1984, wherein the complaint of the plaintiffs in that action was dismissed with prejudice and that the defendants of that action were decreed the owners of the subject property and entitled to the quiet and peaceful possession of the same, and title to the property be quieted in them as against the plaintiffs. Further, the plaintiffs and all persons claiming under them were permanently enjoined from asserting any claim or title adverse to the defendants in the real property.

Also contested by the plaintiffs is the Chancery Court's findings of fact and conclusions of law entered August 9, 1984, on which the Chancery Court based its decree.

The issues in the case were well documented and this Court in consideration of the record entered an order and judgment dated July 8, 1987, which included, inter alia, that the complaint filed herein be dismissed with prejudice.

On July 20, 1987, counsel for the plaintiffs filed a motion to set aside this Court's order of dismissal entered July 8, 1987, and at the same time filed a motion for additional time to file amended motion to set aside order of dismissal. On July 30, 1987, counsel for the plaintiffs submitted to the clerk of the court a proposed precedent for an order finding that the plaintiffs should be allowed to file their amended motion to set aside the order of dismissal.

In plaintiffs motion to set aside the order of dismissal entered by this Court it is alleged that the Court entered its order prior to defendants response to the plaintiffs amended complaint and that the court failed to rule on the plaintiffs' motion for reclusal of defendants attorney filed May 5, 1987, by the plaintiffs.

At the time this Court entered its order it had the benefit of the plaintiffs amended complaint filed on May 5, 1987. The issue on the plaintiffs' motion for reclusal was a matter of Chancery Court considered and disposed of in its Chancery Court Decree in the state action.

In these requested motions and actions by counsel for the plaintiff no question has been raised as to the jurisdiction of the Chancery Court on the issues contested before the Chancery Judge. Neither is there any question raised in the entire record that the Chancery Judge acted in his capacity of a judge and with jurisdiction as provided by the statute and laws of the State of Arkansas.

The Court in its order entered July 8, 1987, dismissing the action in this jurisdiction thoroughly covered the issues and the reason for the Court's decision. It is, therefore, unnecessary for this Court to elaborate on the question of

absolute immunity under the law of the Chancery Judge Charles E. Plunkett or that the United States District Court had any authority to review final judgments of a state court rendered in a judicial proceeding.

It follows that the motion of the plaintiffs to set aside the order of dismissal by this Court is without merit and should be denied.

IT IS, THEREFORE, CONSIDERED, ORDERED AND ADJUDGED that the motion of the plaintiffs to set aside the order of dismissal of this Court entered July 8, 1987, be and the same is hereby denied.

DATED this 12th day of August, 1987.

/s/ Oren Harris
United States District Court

U.S. District Court
Western Dist. Arkansas
Filed
Aug. 12, 1987
Beverly R. Stites, Clerk
By: Jane C. Wright
Deputy Clerk